



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**HIGH COURT CIVIL CASE NO. 1539 OF 2002**

**MERCY MUTHONI WANGAI .....1ST PLAINTIFF**

**JOSEPH KIOGOTHE KARIUKI ..... 2ND PLAINTIFF**

**VERSUS**

**MILLICENT NJOKI KIIRU .....1ST DEFENDANT**

**JOSEPH NDEGWA KAMAU .....2ND DEFENDANT**

**JOSEPH KABUGO NJENGA .....3RD DEFENDANT**

**JUDGMENT**

By my order of the 7th July, 2003 I granted the prayers contained in the Complaint herein on an ex-parte hearing of the suit. On the 30th July, 2003 I suspended orders 2, 3 and 4 and allowed the parties to call further evidence with a view to determining which of my orders were to be confirmed.

The Plaintiffs gave evidence and called witnesses, as did the 1st and 2nd Defendants.

The Defendants in their Defence denied the existence of a partnership and the fraudulent acts alleged against them.

The 3rd Defendant did not give evidence and at the end of the hearing sought leave to get another advocate to represent him which application I refused.

On the 7th July 2003 I made an order for the dissolution of the partnership, but reserved the question as to what orders would be confirmed.

In so far as the partnership is concerned it is not in dispute that the parties were registered as a business under the Provisions of the Registration of Business Names Act as carrying on business under the name Busy Base Shelter. As I pointed out in my ruling of the 30th July, 2003 Miss. Ocheing Omolo & Co., for the Defendants wrote to the Registrar on the 17th September, 2002 informing him that the Defendants has dissolved the business and that the certificate of registration should be cancelled. I am satisfied on the evidence that a partnership did exist although there was no written partnership deed. The provision of section 28 of the Partnership Act apply and thus the parties are entitled to share equally in the capital and profits of the business.

The nature of the business carried on was as commission agents involved on the sale of plots of land for the customers.

The big issue in this case related to a piece of land at Kajiado known as kajiado/Kaputhiel-North/1781. It was the Plaintiffs contention that his was partnership property and that the proceeds of sale of the plots, into which it was sub-divided, belonged to the partnership.

The Defendants maintained that the property belonged to the 1st Defendant Millicent Njoki Kiiru. The 1st Defendant gave evidence and produced a copy of the title the property and a copy of the property section showing that she was registered as proprietor of the property on the 23/4/2002 she gave evidence that she had funds on her retirement from Kenya Power and Lighting Co., Ltd and used part to buy the property which was sub-divided into plots and sold as separate units by the partnership. She was to get the value of the land and the partnership would get a commission. I accept the evidence of this witness as being entirely true and find that she was the beneficial owner of the property and that the partnership was entitled to a commission on the sales of the plots.

The evidence of the second defendant was that the Commission earned on the plots was Shs.41,750/= I accept that this is a correct figure and there has been no complaint from the Plaintiff that this was not received by them and was correct.

With regard to the dealings in money between the Plaintiff and second Defendant these receipts and payments appear to have been in the nature of personal loans and are not accountable for in the partnership.

On the evidence before me it appears that the Plaintiffs have received all monies they were entitled to in the partnership so long as it subsisted until the date when by my order it was dissolved.

In the circumstance it would be pointless to order accounts to be produced by the Defendants.

I therefore dismiss prayers 1,2,3 and 4 of the plaint. Prayer 5 has already been granted. With regard to costs.

I order that each party will pay it own costs.

Dated and delivered at Nairobi this 27th day of May, 2004

**P.J RANSLEY**

**JUDGE**